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ABSTRACT

The recent United States Supreme Court decision in "Franklin v. Gwinnett County Public Schools" highlights the additional risks facing school districts and employees under federal statutes and the common law as a result of sexual misconduct by school employees. The "Franklin" case illustrates that damages could be available to the student and that such damages can be levied against the district and its supervisors as well as the accused teacher. Other court cases are used to illustrate activities that constitute sexual misconduct and subsequent dismissal of the employee by school boards. Discussed next are the several different tests in deciding whether the conduct of an employee involved in sexual misconduct must be remediated. These tests are a single-standard test, a two-standard test, and a multistandard test. Using court cases to illustrate each test, the implications and ramifications are presented. The final section is on rules of evidence and school board hearings. This information covers the hearsay rule, polygraph tests and hypnosis, the exclusionary rule, forensic evidence, and administrative hearings and criminal cases. Conclusions and recommendations are given. (Contains 45 endnotes.) (RR)

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# A Legal Memorandum

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## Sexual Misconduct By School Employees

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Elementary and secondary school students who are subject to the state's compulsory attendance requirements and who have not reached the age of legal majority are, in a sense, entrusted to schools. So, courts may regard the relationship between students and school employees as a special one, and may hold school employees to a higher standard of care under the common law than are many other employees.

The recent United States Supreme Court decision in *Franklin* v. *Gwinnett County Public Schools*[1] highlights the additional risks facing school districts and employees under federal statutes as well as under the common law.

In the *Franklin* case, for example, the Court unanimously held that where a teacher is alleged to harass and abuse a student by coerced sexual intercourse, forcible kissing on the mouth, and placing calls to the student's home requesting social meetings, damages could be available to the student under Title IX for virtually all forms of sexual misconduct. What's more, such damages can be levied against the district and its supervisors as well as the accused teacher.

Although not directly at issue in *Franklin*, the school district closed its investigation of the student's complaint of sexual harassment after the teacher resigned without any action having been taken. This left open the consideration that school district response to complaints of sexual misconduct may affect district liability.

While sexual misconduct involving students is an emotional issue, there are relatively few reported cases. Since 1968, the annual number of cases reported has generally not exceeded six. Yet, reported cases do not reflect the situations in which employees resign or are discharged by school boards without pursuing judicial appeals.

It remains to be seen whether *Franklin* will increase the frequency of reported cases because school districts believe they must aggressively pursue all complaints of sexual misconduct.

Essential to an evaluation of sexual misconduct is an understanding of the range of activities that have been considered unacceptable. In many states, under statutes or collective bargaining agreements, certain categories of employees cannot be discharged without demonstration that the alleged unacceptable conduct is irremediable, but irremediability has not been a serious prohibition to discharging employees for sexual misconduct with students.

When employees challenge allegations of sexual misconduct, school boards will probably be required to hold an administrative hearing and the kinds of evidence that can be introduced by the school district to prove unacceptable activity may be crucial to its case, especially where the standard of proof for administrative hearings is different from court proceedings.

### Activities That Constitute Sexual Misconduct

As in the *Franklin* case, the most common form of sexual misconduct involves some form of employee physical contact with students. The most egregious form of physical misconduct involves sexual relations between an employee and a student, and courts have consistently upheld discharges where credible evidence of such relations has been presented.[2]

Discharge for sexual relations with students may even extend beyond the time the student attends the high



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school. In *Sertik* v. *School Board of Pittsburgh*[3] a teacher who had sexual intercourse with a student during the student's last semester in high school was discovered by police having intercourse with the same student during the summer following the student's graduation.

Although the teacher objected to the police arrest and to admission in court of statements he and the young woman made to the police, the discharge was upheld because of "the School District's interest in its students of relatively tender years and insuring an appropriate school environment. . . ."[4]

Student allegations regarding sexual misconduct may be raised years after the conduct, and yet, a school board discharge of the employee can still be upheld. In *Johnson* v. *Independent School District No. 294*[5] discharge of a teacher for having sexual intercourse with a 16-year-old student was upheld three or four years after the incident took place: "by virtue of the nature of the offense—sexual intercourse with a minor student of the district—it may be considered doubtful whether such conduct could ever be too remote in time."

However, most cases involving physical contact between school employees and students concern conduct other than sexual relations. Many cases in this category also involve standards for discharge in state tenure statutes and collective bargaining agreements, since the employee may claim that the disputed conduct does not violate the stated standard.

***Student allegations regarding sexual misconduct may be raised years after the conduct, and yet, a school board discharge of the employee can still be upheld.***

Discharges have been upheld for: a school bus driver who touched, grabbed, hugged, kissed, and lay on female pupil passengers, which the driver described as merely "clown[ing] around";[6] a planetarium technician who kissed one student;[7] a teacher who pinched three second grade girls on the buttocks during P.E. class;[8] a third-grade teacher who was involved in two fondling incidents with 9-year-old girls;[9] a teacher who touched the thigh of a fifth grade female student, making rubbing movements and causing the girl to run crying to the office;[10] a band teacher who improperly touched and kissed three sixth and seventh grade female students;[11] a band teacher who struck three male students lightly on the genitals;[12] a P.E. coach who hugged female students against their will and who slapped at least one student on the buttocks and placed his hand on the knee of another;[13] a teacher who twice held a 12-year-old emotionally disturbed male student in his lap and rocked and kissed the boy;[14] a teacher of the perceptually-impaired who showed sexually explicit materials to her students;[15] a teacher who hugged, kissed, and touched five female students;[16] and a science teacher who kissed and fondled a female student in the science preparation room several times during one year.[17]

As in the *Johnson* case described above, where a delay of three to four years in holding a dismissal hearing for a teacher who had sexual relations with a student was upheld, a delay can also occur in other kinds of sexual misconduct situations.

In *Fisher* v. *Independent School District No. 622, North St. Paul/Maplewood*,[18] a state court of appeals addressed a delay in bringing dismissal charges of a duration significantly longer than the three to four years in *Johnson*. In *Fisher*, the school board had not been notified until 1983 of sexual abuse involving a teacher and an elementary student from 1967 through 1971.

Despite the 13-year delay in bringing charges, and despite the teacher's claims of "a deprivation of due process arising from the remoteness of the charges, the resulting loss of relevant evidence, and impeachment of witnesses' memories," the court found the teacher had received the statutory procedural due process to which he was entitled and concluded that "[p]roof of a teacher's sexual acts with a student is uniformly held to be sufficient grounds for dismissal."

Employee dismissal can also be upheld for physical contact with a student even though the student does not go to the same school as the teacher and the contacts occur off school property.

In *Shipley* v. *Salem School District 24J, Marion County*,[19] a teacher who, on 11 occasions, either placed his hands on a 12-year-old boy's genitals or had the boy touch his genitals, was subject to a school board's dismissal process even though the boy did not attend the teacher's school. The court noted that the acts were sufficient to constitute "gross unfitness" and "immorality" under the state dismissal statute because the boy went to school "in the district where [the teacher] taught . . . [and] was the same approximate age as [the teacher's] students."

In *Weissman* v. *Board of Education of Jefferson County School District No. R-1*,[20] a teacher who engaged in "good natured horseplay" of touching and tickling female high

school students in the van during a field trip, including touching them between their legs, was dismissed for unfitness. "Whenever a male teacher engages in sexually provocative or exploitive conduct with his minor female students a strong presumption of unfitness arises against the teacher."

Similarly, a situation in which minor female students and their mother were living with a teacher who shared the bathroom and slept nude in the bed with the girls constituted immoral conduct that rendered the teacher "unfit for the performance of his duties."[21]

Although school employees' verbal comments that have sexual connotation might seem less likely to support dismissal than physical contact, courts seem very supportive of school district efforts to discharge employees who make inappropriate remarks. In *Downie* v. *Independent School District No. 141*,[22] a junior high school counselor was dismissed for: being involved in a weight-loss bet with ninth-grade students, the terms of which included sexual activities with the counselor; repeatedly administering an oral survey to individuals and groups of junior high school students regarding their personal sexual activities; using vulgar, crude, and inappropriate language and stories when speaking to students; and breaching the confidentiality of students whom he counseled, including disclosing an incest victim's confidences to teachers in a social setting.

Despite the counselor's favorable evaluations and otherwise unblemished record, the *Downie* court found the threat of psychological harm to be greater to students who tend more frequently to confide in a counselor than subject matter teachers. In discounting the teacher's record, the court observed:

> Arguably, he [the counselor] should be held to an even greater standard of care and sensitivity than teachers in other disciplines . . . . It should not be necessary to tell a counselor that his conduct is inappropriate when the conduct clearly violates the code of ethics which binds the counselor.

In *Penn-Delco School District* v. *Urso*,[23] dismissal was upheld for a teacher who admitted to fantasies about spanking girls and who repeatedly threatened to spank a 17-year-old high school student, causing the student to become nervous and upset. The court noted that "A finding of the school board that a professional employee was guilty of offending the moral standards of the community by his actions will not be disturbed on appeal when supported by substantial evidence."

In *Scott County District 2* v. *Dietrich*,[24] a teacher was dismissed for such actions as: hanging around cheerleaders and being alone with female students in a locked classroom; touching a female student on the hip and pinching her hip; and pressing papers against a female student's chest.

Other kinds of conduct have been held to support employee dismissal. In *Sauter* v. *Mount Vernon School District No. 320, Skagit County*,[25] a court upheld the school board's determination that the following statements involving personal information made to a female student by a teacher "[had] no legitimate teaching purpose and [were] inherently harmful to the student/teacher relationship": statements to the female student that his marriage was in trouble, that he found her attractive, that he had a vasectomy, and that he wanted to make love to her.

In *Clark* v. *Ann Arbor School District*,[26] the following conduct supported dismissal of a female teacher as being in violation of a public policy that "as a minimum, responsible conduct upon the part of a teacher . . . excludes meretricious relationships with [her] students . . .": being alone in a male high school student's bedroom on several occasions, including one occasion when the student gave her a back massage; being found kissing the student while he lay in his sleeping bag with no clothes on; and spending an entire night in the student's room.

In *Manheim Central Education Association* v. *Manheim Central School District*,[27] a Pennsylvania court determined that teacher discharge under the state's dismissal statute was appropriate for a teacher who had written love letters to two of his female students. In its ruling, the court found that the statutory ground for dismissal, "immorality," was not mutually exclusive from the collective bargaining requirement that "just cause" had to exist before a professional employee could be disciplined.

## The Question of Remediability

In a number of states, statutes or judicial decisions require that an employee dismissal cannot be based solely on employee misconduct; the school board (and the courts on appeal) must determine the extent to which school relationships have been damaged and/or the extent to which the employee's conduct can be remediated.

Courts use one of several different tests in deciding whether the conduct of an employee involved in sexual misconduct must be remediated: a single-standard test; a two-standard test; and a multi-standard test.

The single-standard test is represented by the earlier-

cited case of *Clark* v. *Ann Arbor School District*. In *Clark*, a teacher could be discharged for conduct with a student only if the teacher's activities could be demonstrated to have adversely affected students, other teachers, or the school. The adverse effect was found in *Clark* because public policy "excludes meretricious relationships" between a teacher and her student.

Slightly different versions of the two-standard test are represented by the cases of *Sauter* v. *Mount Vernon School District No. 320, Skagit County*[28] and *Board of Education of Argo-Summit School District No. 104, Cook County* v. *Hunt*.[29]

In *Sauter*, the two standards were stated in the alternative: whether the conduct "materially and substantially affects performance"; or whether "the teacher's conduct lacks any positive educational aspect or legitimate professional purpose." The school board and appeals court found the high school teacher's sexual advances and letter writing to a student to be irremediable because "[his] conduct was sexually exploitive and was directly related to his conduct as a teacher." Such conduct "[had] no legitimate teaching purpose and [was] inherently harmful to the student/teacher relationship."

In *Hunt*, the court stated the two tests of remediability in the conjunctive, meaning that the school board had to prove both tests before conduct would be considered to be irremediable: whether damage had been done to the students, faculty, or school, and whether the conduct resulting in the damage could have been corrected had the teacher's supervisors warned him.

***In a number of states, statutes or judicial decisions require that an employee dismissal cannot be based solely on employee misconduct; . . .***

In this case, involving discharge of an elementary teacher for repeatedly pinching students on the buttocks, the first test was satisfied by the testimony of a child psychologist that the teacher's conduct had a highly traumatic effect on the young girls. From that evidence the Hunt court relied on the "special position of trust in our society" that teachers occupy and concluded that the teacher's conduct "[was] not only harmful to the teacher-student relationship, but [was] equally harmful to the reputation of the faculty and the school district."

Regarding the second test, the *Hunt* court refused to interpret that test so broadly to mean that every teacher is entitled to one warning. "If it took only a promise never to engage in the improper conduct again, it is clear that it would be difficult, if not impossible, to satisfy the second prong of the remediability test."

The court distinguished this set of facts from discharges based on teaching deficiencies or use of corporal punishment because the teacher's conduct in this case had "no legitimate basis in school policy." In addition, the court noted that "[t]here is unrefuted evidence that the type of conduct engaged in by *Hunt* has a high degree of recurrence."

The multi-part standard for remediability is the most difficult to assess because it involves several factors to be considered by a school board in determining employee dismissal: the employee's prior record; the severity of the conduct in light of that record; any actual or threatened harm, either physical or psychological; and the possibility the conduct would have been corrected had the employee received a warning from his or her supervisors.

In the case discussed earlier, *Downie* v. *Independent School District No. 141*, a junior high school counselor who engaged in a variety of inappropriate behaviors was discharged in spite of favorable evaluations and an otherwise unblemished record. The *Downie* court found the threat of psychological harm to be greater to students who would tend to confide in a counselor more frequently than subject matter teachers.

Even under the above three standards for remediability requiring a warning, or where harm must be proved in cases involving sexual misconduct or impropriety, courts have tended to presume harm simply on the basis of the misconduct or impropriety itself.

In *Mott* v. *Endicott School District No. 308*,[30] for example, the Washington Supreme Court held that "the striking of students in the genitals, for whatever reason, is so patently unacceptable that the school district is entitled to discharge the teacher for his actions . . . regardless of prior warnings."

In *Board of Education of Chicago* v. *Box*,[31] a psychologist's testimony regarding the fear and anxiety reactions of elementary students to their teacher's touching their chests, shoulders, legs, and buttocks, was conclusive in establishing irremediability. "In this case, a warning could not have corrected the psychological damage to the students or the damage to the reputation of the faculty and school district that was caused by defendant's conduct." On the other hand, courts do not permit the absence of immediate psychological harm to be a roadblock to employee dismissal.

In *Fadler* v. *Illinois State Board of Education*,[32] a court upheld an elementary teacher's dismissal for placing his hand inside the jeans and on the breasts of female students even though no irreparable damage had been shown regarding the students. But, as the court observed:

> It is true no immediate medical or psychological treatment for the two students fondled was necessitated by plaintiff's conduct . . . . The board is not required to wait until such conduct causes clinical adverse effects on the students before finding the conduct immoral and irremediable while other students may be subject to future abuse. As the board's expert testified, true damage resulting from sexual abuse may take years to manifest.

However, remediability may be required in certain situations involving elements of impropriety. In *Hegener* v. *Board of Education of City of Chicago*,[33] a female physical education teacher had been faced with a wide variety of charges of sexual misconduct, such as kissing and fondling female students, all of which were found by a hearing examiner not to be credible. But dismissal was nonetheless recommended for such irremediable conduct as buying gifts for a female student, taking the girl on numerous outings, and persuading the girl frequently to stay overnight at the teacher's residence.

In directing that the alleged improper conduct was remediable, the Illinois Court of Appeals found that "other teachers [at the same school] engaged in similar types of relationships or activities." But the court took direct aim at a discredited and unproven rumor which had circulated at the school regarding an alleged lesbian relationship the teacher was supposed to have had with a female student and which had formed the basis for an ongoing strained and hostile relationship between the teacher and her principal.

The court observed that "it is impossible to determine from the record in this case the extent to which the rumors were prolonged by school authorities' failure to act more quickly in establishing peace among its teachers." In conclusion, the court could find no damage to the students involved or to the school that warranted a determination of irremediability.

## Rules of Evidence and School Board Hearings

The vast majority of cases involving school employee dismissal which reach the hearing stage before a school board concern application of a state's judicial rules of evidence to the dismissal hearings. The following discussion regarding rules of evidence and school board hearings does not refer only to cases involving sexual misconduct, but the principles involved would be applicable to such cases.

As in most administrative hearings, such as those involving school boards, the standard of proof is preponderance of evidence rather than the higher criminal standard of guilt beyond a reasonable doubt. Nor is a school board required to defer a dismissal hearing until an employee's criminal proceeding arising out of the same sexual misconduct has been completed.[34]

But evidence that a criminal statute has been violated, e.g., sexual assault or battery, will usually satisfy the burden of proof in an administrative hearing, whether the sexual assault or battery is committed against a student or a non-student.[35]

Generally, evidentiary rules for administrative agencies, such as school boards, are also more relaxed than for court proceedings. State statutes frequently provide that administrative agencies are not limited by the same common law rules of evidence that apply in court proceedings.

### *The Hearsay Rule*

One of the most venerable of all rules of evidence is the hearsay rule, which generally requires that the person who made certain statements or allegations must testify himself or herself rather than a third party to whom those statements/allegations may have been made. In *Hinkle* v. *Garrett-Keyser-Butler School District*[36] a teacher charged with improperly touching three female students was not denied a constitutional right to confront witnesses when a guidance counselor and a welfare worker related to the school board the content of the conversations they had with the three girls; however, under Indiana law, the school board could not base its dismissal decision entirely on the hearsay evidence.

The *Hinkle* court's rationale for upholding the statutory authorization of hearsay evidence was "the interest . . . of avoiding the likelihood that students would have to testify on such matters in the presence of their peers or teachers. . . ."

### *Polygraph Tests and Hypnosis*

The use of polygraph test results or statements elicited under hypnosis are other areas where administrative

agencies and courts may operate under differing requirements than the courts. In *Libe* v. *Board of Education of Twin Cedars Community School District*,[37] admission of the results of a polygraph exam at a school board hearing concerning discharge of a teacher was upheld to indicate that the complainant student was not being deceptive in alleging that she and the teacher had engaged in one act of sexual intercourse.

In *Mondragon* v. *Poudre School District R-1*,[38] statements by a student against an elementary teacher concerning sexual misconduct during two and one-half years were admissible both before and after the student had submitted to hypnosis, although the statements following hypnosis could be admitted only as corroboration of statements made prior to hypnosis.

### *The Exclusionary Rule*

Whether statements made during a police interrogation or evidence seized by the police can be admitted at a dismissal proceeding can become issues under what is known as "the exclusionary rule," a judicially constructed rule that examines the legality of searches and seizures.

In *Sertik* v. *School Board of Pittsburgh*, the high school teacher whom police discovered having intercourse with a former student in his car, objected at his dismissal hearing to the admission of statements by him and the former student on the basis of an illegal stop, illegal arrest, illegal search, and illegal interrogation. In interpreting the exclusionary rule, the *Sertik* court followed the United States Supreme Court's 'social benefits versus cost' framework[39] upholding the admissibility of statements made by the former student and the teacher at the time the police found them in the car.

In applying this framework, the *Sertik* court observed that on the social benefit side, since the police department and the school district were not allied agencies, "the suppression of the evidence in the School District's termination hearing will have little effect in deterring the police department from future illegal activity." On the cost side, "the School District's interest in protecting its students and insuring a safe school environment would be jeopardized by the exclusion of evidence concerning serious misconduct by its employees."

### *Forensic Evidence*

Dismissal hearings may also involve the use of forensic evidence. In *Evers* v. *Pender County Board of Education*,[40] a teacher, charged at a dismissal hearing with having sexual intercourse with a student on school grounds, objected to the board's admission of a forensic serologist's testimony regarding the results of laboratory tests performed on two cloths found in the teacher's classroom because 'chain of custody' for the cloths had not been established.

In declaring that the usual criminal rules of evidence did not apply to teacher dismissal proceedings, the court declared the state's standard to be that:

> as long as evidence which is proffered at a teacher dismissal hearing can be said to be of a kind commonly relied upon by reasonable prudent persons in the conduct of serious affairs, such evidence is competent and may properly be admitted into evidence.

### *Administrative Hearings and Criminal Cases*

In some cases, courts have seemed to impose evidentiary standards in administrative hearings very similar to those in criminal proceedings. In *Board of Education of Tonica Community High School District No. 360* v. *Sickley*,[41] a tenured teacher charged with sexual misconduct at a dismissal hearing was entitled to a presumption of innocence and "unsupported charges [were] not sufficient to justify dismissal of a teacher on the ground that the reputation of the school district [had] been damaged."

In interpreting the "prior bad acts" exception to the hearsay rule, a state supreme court in *Strain* v. *Rapid City School Board For Rapid City Area School District*[42] applied the same hearsay rule exceptions as would be applied in criminal cases and limited the use of prior bad acts to proof of intent or credibility. In a somewhat more problematic decision, a state appeals court in *Jeter* v. *Alabama State Tenure Commission*,[43] refused to compel appearance at a school board discharge hearing of witnesses who had failed to appear at the hearing even though they had been subpoenaed by the teacher accused of sexual advances.

In referencing the teacher discharge statute that "[i]n case a person refuses to obey such subpoena the board . . . may invoke the aid of the circuit court in order that the testimony be produced . . . ," the *Jeter* court observed that the "permissive language correlates with the discretion courts are given on the matter of continuances and compelling attendance of recalcitrant witnesses in a criminal case."

What makes *Jeter* somewhat problematic regarding its comparison of school board hearings to criminal cases is whether the same teacher charged in a criminal case for

sexual misconduct with a student would have been refused an order compelling witnesses to appear.

## Conclusions and Recommendations

While the number of reported cases have so far been few, school employees' sexual misconduct with students has been treated seriously and severely by courts. The case law does not seem to suggest that courts are subverting established legal principles in upholding employee terminations. Rather, courts seem disposed to follow the school boards' definition of conduct that is inappropriate in a school setting.

If judicial deference plays a role in analyzing school employee misconduct, it is deference reflecting the trust relationship that should be an integral part of the school-student relationship; as a result, courts do not appear willing to make themselves independent assessors of the effects of sexual misconduct.

The courts' virtually unanimous support for boards' dismissal of school employees for sexual misconduct could be considered as a judicial encouragement to school officials to protect the physical, emotional, and psychological well-being of students who might be the victims of sexual mistreatment.

In a society where many school children have unstable home environments, the role of school personnel in attempting to address student needs must still be framed within the bounds of appropriate conduct.

While courts have so far tended to excuse districts and their administrators for mere failure to move as strongly as they might have to investigate student allegations of sexual misconduct by teachers or other employees, recent decisions convey strong warnings that this may not continue.

Indeed, at least one federal appellate court refused to dismiss such claims and referred the case back to the federal district court for trial to determine whether the conduct of the district's administrators constituted "deliberate indifference" to the actions of their employees, in which case liability could be found to exist under Section 1983 of Title 42 U.S. Code, a federal civil rights Act.[44] While no liability was ever assigned, the district and its insurers agreed to costly settlements with three students.

In a more recent federal appellate decision, the court dismissed similar charges, finding that, "with over 4,000 employees, five complaints against a teacher over a 16-year period did not constitute a 'persistent and widespread pattern of unconstitutional misconduct'," but the court concluded its opinion with this warning:

> In the future, this court will closely scrutinize bureaucratic hierarchies which, in their operation, tend to insulate its policymaking officials from knowledge of events which may subject them to Section 1983 liability. . . .a defense of no liability due to lack of knowledge may no longer apply to a bureaucracy which continues to block notice to the board of allegations of sexual abuse of students committed by teachers and others during school related activities.[45]

The *Franklin* decision, with its impending threat of civil suits for damages for violations of Title IX, should further encourage school districts to actively pursue complaints of sexual misconduct, and also discourage districts from accepting employee resignations in lieu of diligently pursuing investigations and instigating dismissal proceedings where warranted.

To develop a school environment that is safe for students, school districts must design and publish policies and procedures that address the following areas:

1. Those kinds of conduct that will be regarded as unacceptable, (perhaps, under the category of "sexual harassment"), including, but not limited to, physical contact, oral or written words with a sexual connotation, and oral or written communications of a personal nature not related to the educational function of the school
2. General limitation of physical contact with students in situations where safety or health are factors
3. Encouragement of students to report all violations of the school's sexual misconduct policy to their teachers or other school officials
4. Identification of appropriate statutory and collective bargaining language regarding dismissal proceedings that will be invoked by the school district if sexual misconduct has occurred
5. Inclusion of an assurance that all reports of sexual misconduct will be actively and diligently investigated and that appropriate action will be taken consistent with state law.

## Endnotes

1. 112 S. Ct. 1028 (1992).
2. Mondragon v. Poudre School Dist. R-1, 696 P.2d 831 (Colo. Ct. App. 1984); Libe v. Board of Educ. of Twin Cedars Community School Dist., 350 N.W.2d 748 (Ia. Ct. App. 1984).
3. 584 A.2d 390 (Pa. Commw. Ct. 1990).
4. Id. at 394.
5. No. 12305, Dist. Ct. Mem. (3d Judicial Dist. Feb. 12, 1980), cited in Fisher v. Independent School Dist. No. 622, 357 N.W.2d 152, 156 (Minn. Ct. App. 1984).

6. Green v. Board of School Commissioners of the City of Indianapolis, 716 F.2d 1191 (7th Cir. 1983).
7. Allen v. School Board of Dade County, 571 So.2d 568 (Fla. Dist. Ct. App. 1990).
8. Board of Educ. of Argo-Summit School Dist. No. 104, Cook County v. Hunt, 487 N.E.2d 24 (Ill. App. Ct. 1985).
9. Fadler v. Illinois State Bd. of Educ., 506 N.E.2d 640 (Ill. App. Ct. 1985).
10. Lewis v. East Feliciana Parish School Bd., 452 So.2d 513 (Ala. Civ. App. 1985).
11. Lombardo v. Board of Educ. of School Dist. No. 27, Cook County, 241 N.E.2d 495 (Ill. App. Ct. 1968).
12. Mott v. Endicott School Dist. No. 308, 713 P.2d 98 (Wash. 1986).
13. Pryse v. Yakima School Dist. No. 7, 632 P.2d 60 (Wash. Ct. App. 1981).
14. Rosenberg v. Board of Educ. of School Dist. No. 1, Denver Pub. Schools, 710 P.2d 1095 (Colo. 1985).
15. State v. Parker, 592 A.2d 228 (N.J. 1991).
16. Ricci v. Davis, 627 P.2d 1111 (Colo. 1981).
17. Wissahickon School Dist. v. McKown, 400 A.2d 899 (Pa Commw Ct. 1979).
18. 357 N.W.2d 152 (Minn. Ct. App. 1984).
19. 669 P.2d 1172 (Ore. Ct. App. 1983).
20. 547 P.2d 1267 (Colo. 1976).
21. Lile v. Hancock Place School Dist., 701 S.W.2d 500 (Mo. Ct. App. 1985).
22. 367 N.W.2d 913 (Minn. Ct. App. 1985).
23. 382 A.2d 162 (Pa. Commw. Ct. 1978).
24. 499 N.E.2d 1170 (Ind. Ct. App. 1986).
25. 791 P.2d 549 (Wash. Ct. App. 1990).
26. 344 N.W.2d 48 (Mich. Ct. App. 1984).
27. 572 A.2d 31 (Pa. Commw. Ct. 1990).
28. 791 P.2d 549 (Wash. Ct. App. 1990).
29. 487 N.E.2d 24 (Ill. App. Ct. 1985).
30. 713 P.2d 98 (Wash. 1989).
31. 547 N.E.2d 627 (Ill. App. Ct. 1989).
32. 506 N.E.2d 640 (Ill. App. Ct. 1987).
33. 567 N.E.2d 566 (Ill. App. Ct. 1991).
34. Rosenberg v. Board of Education of School District No. 1, Denver Public Schools, 710 P.2d 1095 (Colo. 1985).
35. Stephens v. Board of Education of School District No. 5, Pierce County, Nebraska, 429 N.W.2d 722 (Neb. 1988).
36. 567 N.E.2d 1173 (Ind. Ct. App. 1991).
37. 350 N.W.2d 748 (Ia. Ct. App. 1984).
38. 696 P.2d 831 (Colo. Ct. App. 1984).
39. See United States v. Janis, 428 U.S. 433 (1976); Immigration and Naturalization Service v. Lopez-Mendoza, 468 U.S. 1032 (1984).
40. 407 S.E.2d 906 (N.C. Ct. App. 1991).
41. 479 N.E.2d 1142 (Ill App. Ct. 1985).
42. 447 N.W.2d 332 (S.D. 1989).
43. 473 So.2d 513 (Ala. Civ. Ct. App. 1985).
44. Stoneking v. Bradford Area School District, 882 F.2d 750 (3rd Cir. 1988).
45. Thelma D. by Delores A. v. Board of Educ., 934 F.2d 929, 936 (8th Cir. 1991).

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